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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 70-5344

LORENZO WILLIS, A MINOR, BY WILLIE WILBON, NEXT FRIEND,
Petitioner

VS:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF RESPONDENT THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

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BRIEF OF RESPONDENT THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

OPINIONS BELOW

Respondent accepts petitioner's recital of the opinions below.

JURISDICTION

Respondent does not dispute the accuracy of petitioner's jurisdictional statement. However, respondent submits that the writ of certiorari to the Supreme Court of Georgia should be dismissed as havng been improvidently granted in that there are now no special or important reasons for reviewing this case, in view of the recent amendment to the Servicemen's Group Life Insurance Act. This amendment, approved December 15, 1971, shortly after the writ of certiorari was granted, defines the word "child" [85 Stat. 642 (1971)] and fully resolves the issues presented to the Court in this case. Accordingly, this Court now has before it little more than a civil action for $10,000 on a life insurance policy, and the outcome of this litigation will affect only the parties involved, not the public in general. Respondent therefore submits that this case is no longer properly the subject of consideration by the Court because there are now no special and important reasons to consider this case. U. S. Sup. Ct. R. 19 (1). For further discussion of this point, see Point IV of the ARGUMENT, *infra.*

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondent agrees with petitioner's enumeration of the Constitutional provisions and federal statutes involved, except that petitioner omitted from his brief the December 15, 1971 amendment to the Servicemen's Group Life Insurance Act, which provides in pertinent part:

"Section 765 of title 38, United States Code, is

amended by adding the following definitions thereto:

'(7) The terms "widow" or "widower" means a person who is the lawful spouse of the insured member at the time of his death.

'(8) The term "child" means a legitimate child, a legally adopted child, an illegitimate child as to the mother, or an illegitimate child as to the alleged father, only if (a) he acknowledged the child in writing signed by him; or (b) he has been judicially ordered to contribute to the child's support; or (c) he has been, before his death, judicially decreed to be the father of such child; or (d) proof of paternity is established by a certified copy of the public record of birth or church record of baptism showing that the insured was the informant and was named as father of the child; or (e) proof of paternity is established from service department or other public records, such as school or welfare agencies, which show that with his knowledge the insured was named as the father of the child.

. . .

"Sec. 2. The provisions of this Act shall apply only to Servicemen's Group Life Insurance in effect on the life of an insured member who dies on or after the date of enactment of this Act."

85 Stat. 642 (1971), 38 U.S.C. § 765, as amended (approved December 15, 1971).

QUESTIONS PRESENTED

(1) Whether, in view of congressional silence on the meaning of the term "child" in the beneficiary

clause of the Servicemen's Group Life Insurance Act, the Supreme Court of Georgia properly referred to the law of the domicile of the deceased serviceman to determine the meaning of "child," rather than to some federal law of domestic relations.

(2) Whether defining "child" in the Servicemen's Group Life Insurance Act according to Georgia law operated to violate petitioner's constitutional rights to equal protection and due process of law.

STATEMENT

Respondent does not accept petitioner's Statement of the case and submits the following Statement.

Prudential is an insurance company which insured the life of Johnny Cleveland Simpson in the amount of $10,000.00 in accordance with the Servicemen's Group Life Insurance Act [79 Stat. 880 (1965), as amended, 84 Stat. 326 (1970), 38 U.S.C. § 765, *et seq.*] (A. 4, 12). This Act provides for insurance for members of the armed forces while upon active duty.

Johnny Cleveland Simpson died on September 19, 1968, while on active duty in the United States Army (A. 4, 12). At the time of his death, the insured was not married and was survived only by his father, Cleveland Simpson, of Elberton, Georgia (A. 64). The insured, Johnny Cleveland Simpson, elected for his insurance benefits to devolve by law, pursuant to 38 U.S.C. § 770(a). He made no designation as to the specific beneficiary (A. 15). When no designation is made, the beneficiary provisions of the Servicemen's Group Life Insurance Act provide that the benefits shall be paid to the person or persons surviving at the

date of the insured's death in the following order of precedence: widow or widower, child or children, parents of such member or the survivor of them, executor or administrator, or other next of kin [79 Stat. 883 (1965), 38 U.S.C. § 770(a)].

Upon demand of the insured's father, Cleveland Simpson, Prudential paid the proceeds of the policy to him (A. 66).

Petitioner alleges that he is the illegitimate child of the insured, Johnny Cleveland Simpson (A. 3), and contends that as the alleged illegitimate child of the insured he is entitled to be regarded as a "child" under the policy and should be paid the proceeds of the policy (A. 4-5).

Although petitioner contends that the deceased serviceman had acknowledged petitioner as his son (see p. 4 of petitioner's brief), there is no written acknowledgment or judicial determination of such paternity. Furthermore petitioner's contention that the Social Security Administration and the Veterans' Administration have recognized the deceased serviceman as petitioner's father is not supported by the record (A. 59). The birth certificate also fails to name a father (A. 61).

Petitioner brought suit in the Superior Court of Elbert County against respondent to recover the sum of $10,000.00 under the Servicemen's Group Life Insurance Act as a result of the death of Johnny Cleveland Simpson. The trial court granted petitioner's motion for summary judgment and denied respondent's cross-motion for summary judgment. The Court of Appeals of Georgia upheld the decision of the trial court. *Pru-*

dential Insurance Company v. Willis, 123 Ga. App. 150, 179 S.E.2d 688 (1970). The Supreme Court of Georgia reversed, and relying on *DeSylva v. Ballentine*, 351 U.S. 570 (1956), held that the meaning of "child" in the Act should be determined by reference to state law. *Prudential Insurance Company v. Willis*, 227 Ga. 619, 182 S.E.2d 420 (1971). Petitioner filed his petition for a writ of certiorari to the Supreme Court of Georgia on June 10, 1971 and this Court granted certiorari on November 9, 1971.

SUMMARY OF ARGUMENT

I. The Supreme Court of Georgia properly referred to state law in determining the meaning of the phrase "child or children" in the Servicemen's Group Life Insurance Act. The Act did not define that phrase at any time pertinent to this action. The law is clear that when Congress is silent as to the meaning of a particular familial relationship in a statute, reference should be made to state law for definition because there is no federal law of domestic relations. *DeSylva v. Ballentine*, 351 U.S. 570 (1956).

Petitioner has attempted to distinguish *DeSylva* by characterizing it as a decision involving only the Copyright Act, whereas the instant case involves the Servicemen's Group Life Insurance Act. This distinction is refuted by the broad language of *DeSylva* which holds that the meaning of an undefined familial relationship in a federal statute should be determined by reference to state law. Moreover, the general scheme of the Servicemen's Group Life Insurance Act is to refer to state law to define the class of beneficiaries.

II. Up until the recent amendment on December 15, 1971, Congress has always intended that "child" in the beneficiary clause of the Servicemen's Group Life Insurance Act be defined under state law. This was most recently confirmed by the amendment to the Act and the legislative history of the amendment. Both the House and Senate reports point out that prior to the effective date of the amendment, the meaning of the terms "child" and "children' in the Act was to be determined by reference to state law. Thus, in addition to the holding of this Court in *DeSylva, supra*, it was the expressed intent of Congress that reference be made to state law.

III. The Fourteenth Amendment does not deny the states power to make classifications and to distinguish between legitimates and illegitimates. In *Labine v. Vincent*, 401 U.S. 532 (1971), this Court held that an intestacy statute barring illegitimate children from sharing in their father's estate does not violate the constitutional rights of illegitimate children.

The Court should follow *Labine* in this case. The holding there that a state may properly exclude an illegitimate from receiving benefits from his father controls the constitutional question raised by petitioner in this case.

IV. The writ of certiorari should be dismissed as having been improvidently granted because the December 15, 1971 amendment which defines "child" for the purposes of Servicemen's Group Life Insurance prevents the questions raised in this case from ever being raised again, at least with respect to insured servicemen who die after December 15, 1971. In view of the amendment, this case is now nothing more

than a $10,000 civil action which will affect only the parties involved and not the public in general. This Court should not consider a case with such limited importance. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955).

ARGUMENT

I. THE SUPREME COURT OF GEORGIA PROPERLY REFERRED TO STATE LAW IN DETERMINING THE MEANING OF THE PHRASE "CHILD OR CHILDREN" IN THE BENEFICIARY CLAUSE OF THE SERVICEMEN'S GROUP LIFE INSURANCE ACT [79 Stat. 883 (1965), 38 U.S.C. § 770] WHEREIN THAT PHRASE WAS UNDEFINED AT ALL TIMES RELEVANT TO THE ACTION BEFORE THIS COURT.

The Supreme Court of Georgia properly referred to Georgia law in determining the meaning of the phrase "child or children" in the Servicemen's Group Life Insurance Act, 79 Stat. 883 (1965), as amended, 84 Stat. 326 (1970), 38 U.S.C. §§ 765, 770. The Act did not define that phrase at any time pertinent to this action. Under settled decisions of this Court, the law is clear that when Congress is silent as to the meaning of a particular familial relationship in a federal statute, reference should be made to the relevant state law for a definition. *DeSylva v. Ballentine*, 351 U.S. 570 (1956); *Seaboard Air Line Railway v. Kenney*, 240 U.S. 489 (1916); *see also Blagge v. Balche*, 162 U.S. 439 (1896); *Hutchinson Investment Co. v. Caldwell*, 152 U.S. 65 (1894).

DeSylva v. Ballentine, supra, is a landmark decision in which this Court looked to state law to de-

termine whether an illegitimate was a "child" with respect to renewal rights under the Copyright Act, wherein the term was not defined. 61 Stat. 652, 17 U.S.C. § 1, *et seq.* (1947). This Court held:

> "We come, then, to the question of whether an illegitimate child is included within the term 'children' as used in § 24 [of the Copyright Act]. The scope of a federal right is, of course, a federal question, but that does not mean that its content is not to be determined by state, rather than federal law. . . . This is especially true where a statute deals with a familial relationship; there is no federal law of domestic relations, which is primarily a matter of state concern.
>
> ". . . The word 'children', although it to some extent describes a purely physical relationship, also describes a legal status not unlike the others. To determine whether a child has been legally adopted, for example, requires a reference to state law. We think it proper, therefore, to draw on the ready-made body of state law to define the word 'children' [in the Act]." *Id.* at 580-81.

The *DeSylva* case is controlling authority in support of the Supreme Court of Georgia's decision in which that court referred to state law to determine the meaning of the phrase "child or children" in the Servicemen's Group Life Insurance Act. *Prudential Insurance Co. v. Willis*, 227 Ga. 619, 182 S.E.2d 420 (1971). Moreover, *DeSylva* clearly establishes that petitioner's argument to the effect that the Supreme Court of Georgia erred by not "undertaking to discover a federal rule to govern the question" is totally without foundation. *See Grove v. Metropolitan Life Insurance*

Company, 271 F.2d 918, 919 (4th Cir. 1959); *Varker v. Metropolitan Life Insurance Company*, 184 F. Supp. 159 (M.D.N.C. 1960); *Metropolitan Life Insurance Company v. Fletcher*, Civil Action No. 67-131 (N.D. Ala., July 28, 1967) (unreported decision); *see also Brantley v. Skeens*, 266 F.2d 447 (D.C. Cir. 1959); *Tatum v. Tatum*, 241 F.2d 401, 405 (9th Cir. 1957).

Undeniably, Congress did not define the phrase "child or children" in the beneficiary clause of the Servicemen's Group Life Insurance Act during any period of time relevant to the matter before this Court. 79 Stat. 883 (1965), 38 U.S.C. §770(a); 117 Cong. Rec. S. 20565 (daily ed. December 4, 1971); 117 Cong. Rec. H. 11000 (daily ed. November 15, 1971); H.R. 92-629, 92d Cong., 1st Sess (1971); 1965 U.S. Code Cong. & Admin. News 3232; *see Stribling v. United States*, 293 F. Supp. 1293 (E.D. Ark. 1968). Accordingly, the issue concerning reference to state law before this Court involves the idential issue decided by this Court in the *DeSylva* case.

In an attempt to escape the clear wording and effect of the *DeSylva* decision, petitioner tries to distinguish that case on two grounds: (1) it involved only the Copyright Act, not group life insurance for servicemen; and (2) the Copyright Act concerns only the creation and protection of a right needed to encourage literary and artistic achievement, not devolution of property upon death. As to the first "distinction" advanced by petitioner, the very language of Justice Harlan's opinion in *DeSylva* contradicts petitioner's argument. The opinion broadly states that the content of a federal statute should be determined by state law, rather than federal, particularly where the statute

deals with a familial relationship, because there is no federal law of domestic relations. Clearly, the Act at issue before this Court deals with familial relationships in designating beneficiaries. Another reason given by Justice Harlan for referring to state law is that the general scheme of the Copyright Act is to refer to state law to define its terms. As with the Copyright Act, it would certainly be necessary under the Servicemen's Group Life Insurance Act to refer to state law to determine who was the widow or widower, or the duly appointed executor or administrator of the estate of the serviceman. Moreover, the statute expressly refers the administrator of the Act to state law to determine the "next-of-kin" of the serviceman. Accordingly, the general scheme of this Act, as with the Copyright Act, is to refer to state law to define these familial relationships.

Petitioner's second argument in attempting to distinguish the *DeSylva* case is an argument raised by the United States Court of Appeals for the Third Circuit in *Metropolitan Life Insurance Company v. Thompson*, 368 F.2d 791 (3d Cir. 1966), *cert. denied* 388 U.S. 914 (1967). The *Thompson* opinion reasoned that there is a basic difference in congressional purpose between a statute which deals with the creation and passing on to succeeding generations of accumulated wealth, as in the Copyright Act, and a statute which provides a substitute source of income for those dependent on the deceased, as in a federal insurance act. Responding to petitioner's argument, respondent shows that the Servicemen's Group Life Insurance Act in no sense guarantees the substitute source of income for those dependent on the deceased. It expressly al-

lows the insured to designate anyone as his beneficiary under the Act without regard to dependency. The insured may name as beneficiary of the policy a friend, an acquaintance, a stranger or anyone without limitation. Petitioner's companion argument that an illegitimate is eligible for a substitute source of income because of the Georgia law requiring a putative father to support his illegitimate children is without merit. There is no obligation for a father to leave any of his estate to his illegitimate children. On the contrary, illegitimates can inherit only from their mother and other children of the same mother under Georgia law. Ga. Code Ann. §113-904.

Moreover, the distinction attempted by petitioner based upon the *Thompson* case is irrational when viewed in perspective. In order to adopt petitioner's argument, it would be necessary to postulate as follows: (1) Copyright royalties are not a source of income which could support a deceased's dependents;[1] (2) insurance benefits are not a form of wealth accumulated over the years by the payment of premiums which could be passed to succeeding generations. On its face, petitioner's argument in attempting to distinguish *DeSylva* is illogical and without foundation.

Petitioner has cited a series of Supreme Court cases for the proposition that the Court should look to some "federal law" to determine the scope of familial terms in federal statutes, when such terms are undefined. Respondent maintains that these cases do not

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1 The *DeSylva* opinion specifically refutes any such argument by pointing out: "The evident purpose of § 24 [of the Copyright Act] is to provide for the family of the author after his death." *Id.* at 582.

support petitioner's argument. For instance, in *Calhoun Gold Mining Company v. Ajax Gold Mining Company*, 182 U.S. 499 (1901), the dispute concerned overlapping mining claims. This Court simply decided what the federal law on mining claims should be. *Calhoun* did not raise a question about the meaning of a particular term in a federal statute.

Petitioner also relies on *Clearfield Trust Company v. United States*, 318 U.S. 363 (1943). The question facing this Court there was whether the time in which the United States must give notice of a forgery on commercial paper to a collecting bank was determined by state or federal law. This case is inapposite because it concerns the obligations and duties of the United States when exercising a Constitutional power, not the meaning of particular words in a federal statute.

In *Wissner v. Wissner*, 338 U.S. 655 (1950), the deceased held a National Service Life Insurance policy. The only question was whether California community property law superseded the federal statute in determining insurance beneficiaries. There was no question whether the party who received the benefits was within the class of familial relations described in the federal statute. This is the same distinction recognized by Justice Harlan in *DeSylva* between the scope of a federal right and its content.

In *Woodward v. United States*, 341 U.S. 112 (1951), the question was whether the National Service Life Insurance Act allowed payments to an adopted brother. This Court noted that Congress was silent on this point and, without considering whether reference should be made to state law, broadly stated: "We are

persuaded by the policy against drawing such a distinction in the family relationship. Contemporaneous legal treatment of adopted children as though born into the family is a manifestation of that policy." *Id.* at 113. In our case, aside from the state law question, there is certainly no similar contemporaneous legal treatment of illegitimates.

The case of *United States v. Zazove*, 334 U.S. 602 (1948), involved only the question of whether a Veterans' Administration regulation issued pursuant to the National Service Life Insurance Act was consistent with that act. There was no question of the statute's meaning, which beneficiary was to take under the act, or whether state or federal law was to apply in determining which beneficiary took under that act.

In *United States v. Oregon*, 366 U.S. 643 (1961), a state intestacy statute conflicted with the federal statute governing how property devolved upon the death of one living in a Veterans' Administration hospital. This Court held that although the devolution of property is an area normally left to the states, in this case the federal statute was a necessary and proper exercise of a power delegated to Congress. In our case, of course, there is no federal statute which directly contradicts state law. Therefore, it would appear that *United States v. Oregon* supports our position inasmuch as it recognizes that we should refer to state law to determine how this property should devolve.

Petitioner's reliance on a rather general statement made in *Reconstruction Finance Corporation v. Beaver*, 328 U.S. 204 (1946) is inexplicable. In that case, the question was whether unattached heavy ma-

chinery could be taxed by state and local governments as "real property" under Section 10 of the Reconstruction Finance Corporation Act, and whether state or federal law should define "real property". This Court reasoned that because the statute did not define "real property" and the legislative history was silent on this point, *local law* should control because concepts of real property are deeply-rooted state traditions. The devolution of property to various familial relations of a deceased is certainly no less deeply rooted a state tradition. Also, in *Beaver* this Court could have relied on the federal law of taxation to define "real property", whereas in our case there is no federal law of domestic relations.

Petitioner also relies on a rather general statement in *United States v. Standard Oil Company*, 332 U.S. 301 (1947), a case involving a subrogation claim, that the relation between the government and soldiers is particularly federal in character. Other, less general statements in the *Standard Oil* opinion would appear to support respondent's position. This Court recognized that "it may fairly be taken that Congress has consented to the application of state law, when acting partially in relation to federal interests and functions, through failure to make other provision concerning matters ordinarily so governed." *Id.* at 309. Certainly, the definition of a familial relation is ordinarily governed by state law. This Court also stated that the main reason for referring to federal law in Standard Oil was because the purpose of the suit against Standard Oil was to make whole the Treasury, not the individual soldier who was injured. It was primarily the government's interest involved, not the personal relation between the soldier and government giv-

ing rise to the liability. In our case, there is absolutely no government interest involved.

Petitioner's inability to refer to any Supreme Court decision contrary to the principle of law established in the *DeSylva* case is understandable in that *DeSylva* clearly and expressly established that in the absence of any definition or congressional guidelines, familial terms shall be defined by reference to state law. The Supreme Court of Georgia in its decision of May 20, 1971, therefore, followed the mandate of this Court.

It is, of course, not contested by petitioner that the Supreme Court of Georgia properly interpreted Georgia law[2] in denying petitioner's claim. *See Foster v. Cheek*, 212 Ga. 821, 96 S.E.2d 545 (1957); *Dobyns v. Prudential Ins. Co.*, 227 Ga. 253, 179 S.E.2d 915 (1971); *Cooper v. Melvin*, 223 Ga. 239, 154 S.E.2d 373 (1967). Therefore, the judgment of the Supreme Court of Georgia in this case should be affirmed.

II. DURING ALL TIMES PERTINENT TO THIS ACTION, CONGRESS INTENDED FOR THE PHRASE "CHILD OR CHILDREN" IN THE BENEFICIARY CLAUSE OF THE SERVICEMEN'S GROUP LIFE INSURANCE ACT [79 Stat. 883 (1965), 38 U.S.C. § 770] TO BE DEFINED BY REFERENCE TO STATE LAW.

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[2] It is also undisputed that Georgia law is the proper body of law to which reference should be made. The serviceman lived in Elberton, Georgia until entering the Service (A. 64). No one has ever questioned which state's law should govern, once it is determined to look to state law.

On December 15, 1971 the Servicemen's Group Life Insurance Act was amended to specifically define the term "child" as used in the Act. Public Law 92-185, 85 Stat. 642 (approved December 15, 1971). The legislative history of the amendment clearly establishes that Congress prior to the effective date of the amendment intended for the terms "child" and "children" in the Act to be defined by reference to state law. Both the United States House of Representatives Report and the United States Senate Report concerning this amendment unequivocally point out that the then existing law required reference to state law for definitional purposes and thus resulted in some lack of uniformity between different states. These Congressional reports further urged the modification of the law in order to adopt the most widely accepted criteria established by *state law* for establishing that an illegitimate is the child of an alleged father. S.R. 92-545, 92d Cong. 1st Sess. (1971), 117 Cong. Rec. S. 20565 (daily ed. December 4, 1971), 1971 U.S. Code Cong. & Admin. News, 3376, 3531; H.R. 92-629, 92d Cong. 1st Sess. (1971).

Each of the respective legislative Reports of the House of Representatives and Senate provided:

> "Existing law dos not define the terms "widow, widower, child or parent" for SGLI purposes *thus presumably leaving such definitions to local state law.*" S.R. 92-545, 92d Cong. 1st Sess. (1971); H.R. 92-629, 92d Cong. 1st Sess. (1971) [Emphasis supplied.]

The Honorable Donald E. Johnson, Administrator of the Veterans' Administration, the officer responsible for the administration of the Servicemen's Group

Life Insurance, concurred with the content and substance of the Congressional Reports by formal letter to the Speaker of the House of Representatives and the Vice President of the United States. Additionally, the comments in Congress with respect to the amendment show that Congress intended to provide a substitute standard for the system of referring to state law under the then existing statute. For instance, Representative Montgomery in commenting upon the amendment before the House stated:

> "H.R. 9097 [the amendment] would also amend the Servicemen's Group Life Insurance provisions of the law so as to provide a uniform definition of the term 'widow', 'widower', 'child' and 'parent'. Experience under the program to date discloses that there is a great lack of uniformity in determining eligibility of beneficiaries *since the insurer must follow the state law applicable in each case.*" 117 Cong. Rec. H.11000 (daily ed. November 15, 1971) [Emphasis supplied].

These extracts and comments clearly establish that prior to December 15, 1971 the statute then in effect concerning Servicemen's Group Life Insurance provided for a reference to state law to determine the meaning of the term "child" therein. Otherwise, no necessity would have existed for an amendment to the Act.

In addition to the December 15, 1971 amendment, the Act itself, when read in conjunction with the general provisions relating to Veterans' benefits, clearly indicates that reference should be made to state law. Nowhere in the original Act or its legislative history are the words "child" and "children" defined. The

Act appears in Title 38 (Veterans' Benefits) of the United States Code. The general provisions of Title 38, 38 U.S.C. § 101 (4) (1964), expressly define "child" as including an illegitimate child under certain circumstances, but Congress specifically stated that the definitions in the general provisions were not to apply to Chapter 19 of Title 38, the chapter in which the Servicemen's Group Life Insurance Act appears. Congress' omission to define the term "child" in the pre-December 15, 1971 Servicemen's Group Life Insurance Act, and its excepting Chapter 19 from the application of the general provisions of Title 38, convincingly establishes that Congress intended that the terms "child" or "children" in the Servicemen's Group Life Insurance Act at the times in issue before this Court should be defined by reference to state law.

III. DEFINING "CHILD" IN GEORGIA SO AS TO EXCLUDE ILLEGITIMATES FROM BENEFITS UNDER THE ACT DOES NOT VIOLATE PETITIONER'S CONSTITUTIONAL RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW.

Undeniably, the Fourteenth Amendment to the United States Constitution does not wrest from the states the power to make classifications and to distinguish between legitimate and illegitimate children. *Morey v. Doud*, 354 U.S. 457 (1957); *Labine v. Vincent*, 401 U.S. 532 (1971). In *Labine* this Court held that an intestacy statute barring illegitimate children from sharing in their father's estate does not violate the constitutional rights of illegitimate children to due process and equal protection of the law. This Court reasoned that even if it "were to apply the 'rational

basis' test to the Louisiana intestate succession statute, that statute clearly has a rational basis in view of Louisiana's interest in promoting family life and of directing the disposition of property left within the State." *Id.* at f.n. 6. This Court found it within the power of a state to distinguish between legitimates and illegitimates because the former are the product of a socially sanctioned, legally recognized marital relationship, and the latter are the product of an illicit relationship beyond the recognition of law.

This Court should follow *Labine* in this case because the question here also involves the devolution of property at death as determined by state law. Unlike *Levy v. Louisiana*, 391 U.S. 68 (1968), and *Glona v. American Guaranty and Liability Insurance Company*, 391 U.S. 73 (1968), cases on which petitioner heavily relies in this case, a question of tort law is not involved. There is no possibility here, as in *Levy*, that a tortfeasor will realize a windfall because of a plaintiff's ancestry. Respondent will be required to pay benefits in this case regardless of whether an illegitimate is involved or not. Also as in *Labine*, Georgia has not erected an insurmountable barrier before this illegitimate child. Petitioner could have benefited from the insurance policy in at least two ways: (1) by being legitimated by the deceased; or (2) by being designated as a beneficiary under the insurance policy.

Petitioner argues that *Labine* applies only to questions of intestate succession where the state may have a compelling interest in the stability of land titles. In this case, petitioner argues, the interpretation of a federal statute is involved; hence this Court should look to the purpose of the Servicemen's Group Life

Insurance to determine whether illegitimates can properly be excluded from the statute's benefits. Respondent strongly urges that the purpose of the Act is not relevant to whether illegitimates can be constitutionally excluded from benefiting under the Act. The question here is not whether it violated equal protection for Congress to draft an act which excludes illegitimates. The question is whether state law can constitutionally exclude an illegitimate from receiving benefits under a federal insurance policy if that insurance policy has left it to the states to determine who is included in certain classes of beneficiaries. As respondent has demonstrated, the Act requires reference to state law to determine whether illegitimates can benefit from it. Therefore, the *Labine* holding that a state may properly exclude illegitimates from benefits under these circumstances should control this Court's decision in this case.

Petitioner also argues that the interpretation of "child" so as to exclude illegitimates from benefiting under the insurance policy is a burden falling most heavily upon Negroes. Under the Georgia law, there is no discrimination against Negroes and in favor of whites. Rather, the legislature has made a choice between various familial relations within one Negro family, a choice which *Labine* recognized as constitutional. Furthermore, the evidence upon which Petitioner relies in this regard (A. 27-36) was ordered stricken by the trial court (A. 90) and this order was not appealed.

IV. IN VIEW OF THE ENACTMENT OF PUBLIC LAW 92-185 (85 Stat. 642) ON DECEMBER 15, 1971, WHICH DEFINES "CHILD"

FOR PURPOSES OF THE SERVICEMEN'S GROUP LIFE INSURANCE ACT, THE WRIT OF CERTIORARI GRANTED ON NOVEMBER 9, 1971 SHOULD BE DISMISSED AS HAVING BEEN IMPROVIDENTLY GRANTED.

Prior to December 15, 1971 and at the time this Court granted the writ of certiorari in this case, the Servicemen's Group Life Insurance Act, 79 Stat. 883, as amended, 84 Stat. 326 (1970), 38 U.S.C.A. § 765 *et seq.*, did not define or otherwise explain the term "child" as used in the Act. Because there was no definition of "child", the Georgia Supreme Court, relying on this Court's decision in *DeSylva v. Ballentine*, 351 U.S. 570 (1956), followed previous Georgia decisions and held that the meaning of "child" should be determined by reference to state law. Petitioner filed his petition for a writ of certiorari and because of the importance (at that time) of the questions presented and because of the frequency with which the questions could be expected to occur in the future, respondent did not object to the grant of certiorari. This Court, recognizing the importance of the issue at the time, granted the writ on November 9, 1971. Less than a week later, on November 15, 1971, the United States House of Representatives, followed by the Senate on December 4, 1971, adopted an amendment defining "child" and other familial terms as used in the Servicemen's Group Life Insurance Act. The amendment, by its terms, applies to Servicmen's Group Life Insurance in effect on the lives of insureds who die on or after the date of enactment of the amendment. The amendment was approved and became law on December 15, 1971. Thus, the benefits due to illegiti-

mate children of insured servicemen who die after December 15, 1971 will be determined by the terms of the new amendment and not by any decision this Court might render in this case.

In view of the amendment, respondent respectfully submits that the writ of certiorari to the Georgia Supreme Court should be dismissed as improvidently granted since this case is not now one in which there are "special and important reasons" for granting a writ, as required by Rule 19 of this Court's Rules.

In *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955), this Court granted a writ of certiorari to review a decision of the Supreme Court of Iowa concerning the right of a Winnebago Indian to be buried in defendant's cemetery. The Iowa decision was affirmed by an equally divided Court. While considering a petition for rehearing, it came to light that an Iowa statute which had been passed after the case had begun would bar the question presented from ever arising again in Iowa, even though the statute was not applicable to petitioner's case because of an exception in the statute relating to litigation pending at the time the statute was passed. In view of the new statute and the fact that the question before the Court would not present itself again, the petition for rehearing was granted, the judgment of affirmance was vacated, and the writ of certiorari was dismissed as improvidently granted because the case was no longer one in which there were "special and important reasons" for reviewing the Iowa decision. The Court reasoned as follows:

> "A Federal question raised by a petitioner may be 'of substance' in the sense that, abstractly con-

> sidered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. *Nor does it sit for the benefit of the particular litigants.* [Citations omitted]. 'Special and important reasons' imply a reach to a problem beyond the academic or the episodic." *Id.* at 74 [Emphasis added].

The Court in *Rice* quoted Mr. Chief Justice Taft, in *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923), where he said:

> "If it be suggested that as much effort and time as we have given to the consideration of the alleged conflict would have enabled us to dispose of the case before us on the merits, the answer is that it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is *of importance to the public as distinguished from that of the parties, . . .* [Emphasis added].

Although not involving the dismissal of a writ of certiorari for being improvidently granted, the Court's language in *Magnum Import Co. v. Coty*, 262 U.S. 159, 163 (1923) is applicable. There the Court, again through Mr. Chief Justice Taft, denied a petition for certiorari and pointed out:

> "The jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was given for two purposes, first . . . and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this Court of last resort. The jurisdiction was not

conferred upon this Court merely to give the defeated party . . . another hearing."

It is clear from a review of the December 15, 1971 amendment to the Servicemen's Group Life Insurance Act that the question presented in the instant case will not occur again. The amendment defines the term "child" to include a legitimate child, a legally adopted child, and illegitimate children under certain circumstances. In view of this new definition, the question before this Court of whether to look to state law to determine the meaning of the word "child" will never arise again. That term and other familial terms are now specifically defined in the Act.

Therefore, this case has become a case which is important now only to the two parties involved. It has no public importance and is not deserving of further consideration by the Court. The case simply does not now involve "special and important reasons" for considering the questions presented, especially in view of this Court's decisions in *DeSylva v. Ballentine*, 351 U.S. 570 (1956) and *Labine v. Vincent*, 401 U.S. 532 (1971) in which this Court spoke to both of the questions which petitioner Willis has raised in this case.

CONCLUSION

For the foregoing reasons, respondent The Prudential Insurance Company of America respectfully urges this Court to affirm the judgment of the Supreme Court of Georgia, or in the alternative, to dismiss the writ of certiorari as improvidently granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing brief of respondent The Prudential Insurance Company of America upon petitioner by depositing three (3) copies of same in the United States mail with sufficient postage affixed thereto and addressed to petitioner's counsel as follows:

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I further certify that all parties required to be served have been served.

This 31st day of January, 1972.

A. FELTON JENKINS, JR.